

COPY

**IN THE CIRCUIT COURT OF POLK COUNTY, TENNESSEE**  
**HELD IN THE DUCKTOWN LAW COURT**

**FILED**

FEB 14 2013

**JUDY LANCE d/b/a J&B DISCOUNT, )**

**Plaintiff, )**

**vs. )**

**OWNERS INSURANCE COMPANY, )**

**Defendant. )**

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Chattanooga

**Docket No. 11-CV-150**

**COMPLAINT**

Judy Lance says:

1. I am a resident of Copperhill, Tennessee and at all times material hereto operated J&B Discount, a hardware/general store located at 5454 Highway 64, Copperhill, Polk County, Tennessee 37317.

2. Owners Insurance Company is a foreign insurance carrier (licensed in the State of Tennessee) with its principal place of business at 6101 Anacapi Blvd., Lansing, MI 48917.

3. This cause of action arises from a breach of contract occurring in Copperhill, Polk County, Tennessee arising from the defendants' failure to honor its obligations under an insurance policy issued to the plaintiff in Polk County, Tennessee. Since the Plaintiff is a Copperhill, Tennessee resident and the breach occurred in Copperhill, Tennessee, jurisdiction and venue are proper in this Court.

4. On or about October 26, 2010, the Defendant issued the attached business insurance policy providing business liability protection to J&B Discount's premises at 5454 Highway 64, Copperhill, Tennessee. The policy provided coverage for building replacement cost and personal

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OCT 18 2011

**EXHIBIT**

**5**

property replacement, cost and business income interruption. A copy of the declarations page and policy are attached as Exhibit 1.

5. As listed on the face of the declarations page, Appalachian Community Bank f/k/a Peoples Bank of East Tennessee is listed as a secured party or another payee.

6. On April 24, 2011, a fire occurred at 5454 Highway 64 destroying the J&B Discount building, its contents and causing complete business interruption.

7. The Plaintiff has complied with the provisions of the policy and has provided a timely sworn proof of loss on June 22, 2011. A copy of the proof of loss and demand for payment of the same date are attached as Exhibits 2 and 3.

8. The Defendant has not accepted or denied the Plaintiff's sworn proof of loss nor has the Defendant paid Appalachian Community Bank's secured lien.

9. The Defendant's refusal to pay the loss within 60 days of the demand for payment of the sworn proof of loss constitutes a bad faith denial under T.C.A. §56-7-105. As a result, the Defendant shall be liable for the loss, interest, expenses and attorney's fees and penalties not to exceed 25 percent of the loss.

10. Because the Defendant has refused to pay the subject demand and has refused to pay the claim of the mortgage holder, Peoples Bank of East Tennessee, (who would be an additional payee under the policy), the Plaintiff has received the two attached demand letters from Peoples Bank (Exhibit 4). The Defendant's failure to honor the demand of Peoples Bank has caused a breach between Peoples Bank and the Plaintiff and violates T.C.A. §47-50-109. The Defendant should be responsible for treble damages for their procurement of the breach.

WHEREFORE, the Plaintiff prays as follows:

(a) That a jury of twelve be empaneled to try the issues of this cause;

(b) That a judgment be rendered in favor of the Plaintiff;

(c) That Plaintiff be awarded her loss, attorney's fees, penalty and costs.

Respectfully submitted,

LOGAN-THOMPSON, P.C.

By 

ROBERT G. NORRED, JR. (BPR#012740)

Attorneys for Plaintiff

PO Box 191

Cleveland, TN 37364-0191

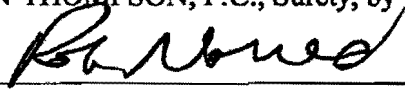
423/476-2251

COST BOND

We, the undersigned Principal and Surety, do hereby acknowledge ourselves as security for the costs of this cause, not to exceed \$1,000.00.

JUDY LANCE d/b/a J&B DISCOUNT  
PRINCIPAL(S) BY ATTORNEY

LOGAN-THOMPSON, P.C., Surety, by



IN THE CIRCUIT COURT OF POLK COUNTY, TENNESSEE

JUDY LANCE d/b/a	)	
J&B DISCOUNT	)	
	)	DOCKET NO. 11CV150
vs.	)	
	)	
OWNERS INSURANCE COMPANY	)	
	)	
	)	
PEOPLE'S BANK OF EAST	)	
TENNESSEE	)	
	)	
vs.	)	
	)	
OWNERS INSURANCE COMPANY	)	

**NOTICE OF FILING REMOVAL**

To: Polk County Circuit Court  
Ducktown Law Court  
P.O. Box 256  
Benton, TN 37307

Please take notice that the only Defendant in the above entitled action, Owners Insurance Company, by and through their attorneys, have this date filed their Notice of Removal, a copy of which is attached hereto, in the office of the Clerk of the United States District Court for the Eastern District of Tennessee at Chattanooga.

You are advised that said Defendant, upon filing said Notice of Removal, filed a copy of the Notice with the Clerk of the state court which has affected this removal, in accordance with 28 U.S.C. §1446(d).

Dated: February 14, 2013.

Respectfully submitted,

**JAMES, GOINS, CARPENTER & TIDWELL**



By: **W. Gerald Tidwell, Jr., BPR # 10136**  
817 Broad Street, Second Floor  
Chattanooga, TN 37402  
(423) 756-3646

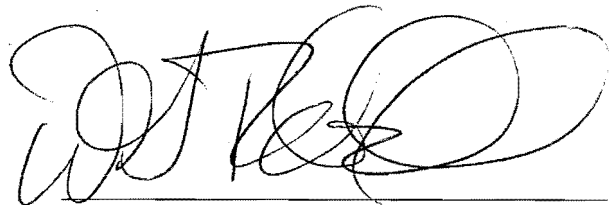
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served upon the following individual(s) by placing same in the U.S. Mail or by hand delivery.

Robert G. Norred, Jr.  
Logan-Thompson, PC  
P.O. Box 191  
Cleveland, TN 37364-0191

Douglas Blackwell  
Blackwell Law Offices, PLLC  
P.O. Box 1455  
Cleveland, TN 37364-1455

This 14 day of February, 2013.



James, Goins, Carpenter & Tidwell